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a new constitution without submission to popular vote. ACTS OF LA., EXTRA SESSION, 1913, 1. Two years after it went into effect, the validity of certain clauses violating these restrictions was attacked. *Held*, that the clauses in question are invalid. *Foley* v. *Democratic Parish Committee*, 70 So. 104 (La.); *State* v. *American Sugar Refining Co.*, 68 So. 742 (La.).

For a discussion of the powers of Constitutional Conventions, see NOTES, p. 528.

CONTRACTS — DIVISIBLE CONTRACTS — REPUDIATION AFTER PART PERFORMANCE — NEED THE PARTY WHO WOULD RELY ON THE REPUDIATION ACT AT ONCE? — The defendant agreed to take the plaintiff's news service for five years at a weekly rate, to be paid each week in advance. After two years the defendant gave notice of intention to repudiate the contract. The plaintiff remonstrated and urged continuance. He continued the service five weeks more; but on getting no further payments stopped the service, and sues for the contract price of service during the five weeks and for his loss of profits for the remainder of the contract. *Held*, that he can recover for past services, but not for future profits. *United Press Association* v. *National Newspapers' Association*, 227 Fed. 193 (Dist. Ct., Dist. Colo.).

Repudiation of a contract after part performance commonly justifies the other party in stopping work and suing for lost profits. *Northrop* v. *Mercantile Trust & Deposit Co.*, 119 Fed. 969; *Cort* v. *Ambergate, etc. Ry. Co.*, 17 Q. B. 127. See *Parker* v. *Russell*, 133 Mass. 74, 76. But it is said this must be done at once, since the repudiation is an offer for a breach, which will become complete only on prompt acceptance. This doctrine is frequently laid down in cases dealing with so-called breach of contract by anticipation. *Smith* v. *Georgia Loan, etc. Co.*, 113 Ga. 975, 39 S. E. 410; *Dalrymple* v. *Scott*, 19 Ont. App. 477; *Zuck* v. *McClure*, 98 Pa. St. 541. See *Roehm* v. *Horst*, 178 U. S. 1, 11, 13; *Johnstone* v. *Milling*, 16 Q. B. D. 460, 467. But see 15 HARV. L. REV. 306. Whatever its sanction in that class of cases, a doctrine so foreign to the business understanding of the matter should not be extended further. Repudiation of a contract by one party justifies the other in believing that his contract is not going to be carried out. This belief reasonably lasts until the repudiation has been taken back. Therefore at any time before that, provided the repudiating party has done no act in reliance on the other party's statement of intention to go on, the latter is justified in stopping work. The contract is then broken totally in consequence of the defendant's wrongful act, and the defendant should be liable for all the profits lost. *Louisville Packing Co.* v. *Crain*, 141 Ky. 379, 132 S. W. 575. See Williston, "Repudiation of Contracts," 14 HARV. L. REV. 421; WILLISTON'S WALD'S POLLOCK, CONTRACTS, 3 ed., 347 *et seq.* The defendant's refusal to make payments is just another straw. It may be that this, standing by itself, would not justify a total refusal to go on. *Beatty* v. *Howe Lumber Co.*, 77 Minn. 272, 79 N. W. 1013. See WILLISTON, SALES, § 467, at 822. But when colored by the prior repudiation, as yet unretracted, it becomes of greater import, and should be held to justify the plaintiff's conduct.

CORPORATIONS — CAPITAL, STOCK, AND DIVIDENDS — APPORTIONMENT OF STOCK DIVIDENDS BETWEEN LIFE TENANT AND REMAINDERMAN. — Stock in a corporation was held in trust to pay the income to the life tenant with remainder over. The corporation declared a stock dividend of one hundred per cent, entirely out of earnings accrued since the stock was subjected to the trust. *Held*, that the life tenant is entitled to the dividend. *In re Heaton's Estate*, 96 Atl. 21 (Vt.).

In order to evade the difficulties involved in determining the rights of the life tenant and the remainderman to extraordinary dividends, whether in cash

or stock, two arbitrary rules of distribution have been adopted: the Massachusetts rule, giving all cash dividends to the life tenant and all stock dividends to the remainderman, and the Kentucky rule, giving all dividends, whether cash or stock, to the life tenant. *Minot* v. *Paine*, 99 Mass. 101; *Hite* v. *Hite*, 93 Ky. 257, 20 S. W. 778. Pennsylvania, however, has instituted a third rule attempting an equitable apportionment: the life tenant is accorded that portion of the dividend, regardless of whether cash or stock, that is derived from earnings accrued since the trust was imposed, and the balance is given to the remainderman. *Earp's Appeal*, 28 Pa. St. 368. Under this rule the practical difficulties in ascertaining the time at which the income actually accrued, and in accounting for enhancement in the corporation assets from other sources than accrued earnings, greatly impede satisfactory apportionment. And when the dividend is of stock, there are further objections to taking it away from the remainderman. For the intention of the settlor seems to be to give the remainderman the present ownership of the stock subject only to the right of the life tenant to its earnings. Hence, to diminish the remainderman's proportionate share in the corporation, and to give to the life tenant, by means of the new stock, an interest in the old assets of the corporation, is technically to defeat this intention. See 26 HARV. L. REV. 77. Furthermore, unless the right is taken into consideration in apportionment, this rule deprives the remainderman in substance of the right of a stock owner to subscribe to any new issue of stock. *Carter* v. *Crehore*, 12 Hawaii, 309. In spite of these drawbacks, in the principal case Vermont has adopted the Pennsylvania rule, and New York and Delaware have recently done likewise, though thereby reversing their former arbitrary rules. Compare *Re Osborne*, 209 N. Y. 450, 103 N. E. 723, with *McLouth* v. *Hunt*, 154 N. Y. 179, 48 N. E. 548; and *Bryan* v. *Aiken*, 86 Atl. 674 (Del.), with *Bryan* v. *Aiken*, 82 Atl. 817 (Del.). On the other hand, Ohio has recently approved the Massachusetts rule. *Wilberding* v. *Miller*, 90 Oh. St. 28, 106 N. E. 665.

EQUITY — SPECIFIC PERFORMANCE — CONTRACT TO BUILD AND OPERATE A DEPOT. — The defendant railroad, in consideration of a grant of a right of way and depot grounds, covenanted with the plaintiffs to erect, maintain, and operate a depot thereon for the general accommodation of the public. The defendant built the depot but operated it for only a short period. The plaintiffs pray for a decree of specific performance. *Decreed*, that defendant operate the depot according to the terms of the covenant so long as such operation remains consistent with its duties to the public. *Harper* v. *Virginian Ry. Co.*, 86 S. E. 919 (W. Va.).

It has frequently been asserted that a court of equity has no jurisdiction to compel performance of a contract involving continuing acts. See 16 HARV. L. REV. 293. But the trend of modern cases, at least in railroad contracts, indicates a complete reversal of that position. *Murray* v. *Northwestern Ry. Co.*, 64 S. C. 520, 42 S. E. 617; *Schmidt* v. *Louisville, etc. Ry. Co.*, 19 Ky. L. Rep. 666, 41 S. W. 1015. See BISPHAM, PRINCIPLES OF EQUITY, 6 ed., § 377. The jurisdiction, however, being concurrent, is entirely lacking if the contract is void at law on grounds of public policy. In general this is the case when a railroad by covenant restricts its freedom of action. *Williamson* v. *Chicago, etc. Ry. Co.*, 53 Ia. 126; *St. Joseph, etc. Ry. Co.* v. *Ryan*, 11 Kan. 602. But contracts to operate a depot at a specified place have usually been held good. *Louisville, New Albany, etc. Ry. Co.* v. *Sumner*, 106 Ind. 55, 5 N. E. 404. See 21 AM. & ENG. R. R. CASES, n. s. 835. These decisions may be rested on the construction given to such contracts by many courts, that the contract, in spite of its terms, calls for performance only so long as it is in accord with public policy. *Texas & Pacific Ry. Co.* v. *Marshall*, 136 U. S. 393; *Atlanta, etc. Ry. Co.* v. *Camp*, 130 Ga. 1, 60 S. E. 177; *Jones* v. *Newport News, etc. Co.*, 65 Fed.